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# NEPA in Transition:

Rescinded Rules, Agency Overhauls, and Judicial Limits – 2025 Reforms Unpacked

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# History of NEPA

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- 1970 – Enactment of NEPA
- 1978 – Formal CEQ Regulations enacted
- 1978-2010s – Development of framework, both regulatory and judicial
- 2020- Trump Administration Regulatory Overhaul
- 2022-2023- Biden Administration Phase 1 and Phase 2 Regulations
- 2023- Fiscal Responsibility Act Amendments to NEPA
- January 2025 – Unleashing Energy Dominance Through Efficient Permitting Executive Order 14154
- April 2025 – Official Recission of CEQ NEPA Regulations
- May 2025 – *Seven County*. SCOTUS holds courts should defer to the agency for any NEPA determinations so long as the agency drew a “reasonable and manageable line.”
- July 3, 2025 (effective Aug) – US Departments issue individual NEPA Regulations
- July 4, 2025 – One Big Beautiful Bill Amendments to NEPA
- September 2025 – CEQ issues NEPA implementation guidance and template

# Statutory Amendments

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- Fiscal Responsibility Act of 2023

- Added procedures for determining appropriate level of NEPA review (42 USC 4336)
- Defined procedures for determining lead agency and the role of cooperating agencies
- Added Deadlines (1 year for EA, 2 years for EIS) and imposed page limits
- Allowed for project sponsor prepared Environmental Impact Statements
- Allowed for expanded use of Categorical Exclusions
- Defined triggers for public involvement

<https://www.congress.gov/118/plaws/publ5/PLAW-118publ5.pdf>

## 2025 Executive Order

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- Unleashing Energy Dominance Through Efficient Permitting- EO 14154
  - Issued January 20, 2025
  - Rescinds President Carter's EO 11991 which directed CEQ to promulgate NEPA regulations
  - Directs CEQ to issue guidance and coordinate the revision of agency-specific NEPA regulations and procedures

## Recission of CEQ NEPA Regulations

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- CEQ issued an interim final rule rescinding its NEPA regulations on February 19, 2025, (rule became effective in April 2025)
- The interim final rule directed federal agencies to develop agency specific regulations and guidance using CEQ's 2020 regulations as an "initial framework for the development of revisions to their NEPA implementing procedures"

# Statutory Amendments

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## ▪ One Big Beautiful Bill 2025

- Amended NEPA to allow project sponsors to fund environmental reviews (42 USC 4336f)
- “(A) an environmental assessment for which a fee is paid under this section shall be completed not later than 180 days after the date on which the fee is paid; and “(B) an environmental impact statement for which a fee is paid under this section shall be completed not later than 1 year after the date of publication of the notice of intent to prepare the environmental impact statement.”
- Fee shall be 125% of the anticipated preparation or supervision costs

### **OBBB Text – NEPA Section 112 (42 USC 4336f)**

“(a) PROCESS.— “(1) PROJECT SPONSOR.—A project sponsor that intends to pay a fee under this section for the preparation, or supervision of the preparation, of an environmental assessment or environmental impact statement for a project shall submit to the Council— “(A) a description of the project; and “(B) a declaration of whether the project sponsor intends to prepare the environmental assessment or environmental impact statement under section 107(f). “(2) COUNCIL ON ENVIRONMENTAL QUALITY.—Not later than 15 days after the date on which the Council receives information described in paragraph (1) from a project sponsor, the Council shall provide to the project sponsor notice of the amount of the fee to be paid under this section, as determined under subsection (b). “(3) PAYMENT OF FEE.—A project sponsor may pay a fee under this section after receipt of the notice described in paragraph (2). “(4) DEADLINE FOR ENVIRONMENTAL REVIEWS FOR WHICH A FEE IS PAID.—Notwithstanding section 107(g)(1)— “(A) an environmental assessment for which a fee is paid under this section shall be completed not later than 180 days after the date on which the fee is paid; and “(B) an environmental impact statement for which a fee is paid under this section shall be completed not later than 1 year after the date of publication of the notice of intent to prepare the environmental impact statement.

“(b) FEE AMOUNT.—The amount of a fee under this section shall be— “(1) 125 percent of the anticipated costs to prepare the environmental assessment or environmental impact statement; and “(2) in the case of an environmental assessment or environmental impact statement to be prepared in whole or in part by a project sponsor under section 107(f), 125 percent of the anticipated costs to supervise preparation of, and, as applicable, prepare, the environmental assessment or environmental impact statement.”.

# Agency Overhauls

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## ▪ Overview

- New NEPA regulatory rules were issued as Interim Final Rules on July 3, 2025
- Various departments have issued updated NEPA regulatory rules including USDA, DOI, DOE, DOD, Army Corps of Engineers, Department of Commerce, Department of the Navy, and DOT.
- CEQ has also published guidance to agencies regarding consultation for development of NEPA procedures and regulations.
- My discussion today focuses on key provisions in the DOI and USDA regulatory changes that I believe could be of some interest to the State

The DOI's interim final rule exemplifies this radical shift in NEPA implementation. DOI's NEPA procedures were codified in 2008 under the Bush administration as part of a broader interagency effort to increase deference to agency-specific NEPA procedures and advance the Bush administration's "cooperative conservation" policy with opportunities for public engagement and input in the NEPA process. These regulations have now been largely reduced to a section in the DOI manual, retaining only provisions for applicant-prepared environmental documents, emergency procedures, and department-wide categorical exclusions. The 2020 CEQ policy direction on the use of the NEPA process to ensure discipline and accountability is not reflected in DOI's interim final rule. DOI's detailed procedures for public involvement and interagency coordination, which were designed to foster efficiency and certainty based on a common set of standards, are now relegated to non-binding guidance. DOI has stated that the flexibility afforded by non-codified procedures outweighs the benefits of maintaining NEPA procedures as regulations. Addressing the interests of third parties that rely on the prior regulations, DOI states that "revised agency procedures will have no effect on ongoing NEPA reviews, where DOI, following CEQ guidance, will continue to apply the preexisting procedures to applications that are sufficiently advanced." Notably, DOI did not appear to consider the implications of rapidly changing NEPA procedures on project developers and the public, who rely on regulatory certainty and consistency in environmental review.

# Agency Overhauls

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## ▪ Changes to Public Involvement

- Both Departments clarify that the only trigger for public comment is the initial Notice of Intent to prepare an EA/EIS
- Both Departments indicate that public involvement at other stages, for example at the Draft stage, is not mandatory
  - USDA Regulations state that publication of a Draft EIS should be exception and not the rule
- Importantly, government to government consultation requirements have not changed. Departments must still engage with the appropriate state and tribal entities.

# Agency Overhauls

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- **Emphasis on Deadlines**

- Both Departments reinforced the NEPA deadlines of 1 year for an EA and 2 years for an EIS barring extraordinary circumstances
- Interior manual includes timelines for NOIs
- Some BLM local offices in Nevada have issued further guidance indicating BLM intends to complete EAs in 6 months and EISs in 1 year.

## Judicial Impacts

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- *Seven County Infrastructure Coalition v. Eagle County*
  - An environmental organization and Colorado filed petitions for the review of the Surface Transportation Board’s final order approving construction and operation of approximately 88-mile railroad line that would connect an oil-rich rural area in northeastern Utah to a national freight rail network. Plaintiffs alleged violations of NEPA stating that the agency should have considered the environmental impacts of increased upstream oil drilling and the increased downstream refining of crude oil carried by the railroad.
  - U.S. Supreme Court entered its decision in May 2025.

## Judicial Impacts

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- *Seven County Infrastructure Coalition v. Eagle County*

- Supreme Court held that

- “[E]ven if the reviewing court in such a case might think that NEPA would support drawing a different line, a court should defer to an agency so long as the agency drew a reasonable and manageable line.”

- Agencies should be afforded substantial deference when determining whether NEPA has been properly applied
  - Effects that are separate in time or place from a proposed project need not be analyzed so long as the agency makes a reasonable and reasonably explained decision

## Takeaways

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- NEPA's regulatory landscape is rapidly changing
- Environmental review timelines will likely be shortened from what has been seen historically, with less opportunities for public involvement
- Agencies will likely be given more leeway from the Courts when applying NEPA, so long as they have a reasonable explanation for the scope of the review conducted

Questions?

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